THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 15692 of 2001

19-12-2005

Between:

Smt. C.Venkat Rao Vanajakshi died as per L.R.

Grand Daughter Smt.M.Valli

W/o Dr.R.Hari Raj,

R/o H.No.1-8-51 & 52,

Penderghast Road,

Secunderabad.

..... PETITIONER

AND

1. The Defence Estate Oficer & Competent Authority, Urban Land Ceilings, Secunderabad Contonment and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 15692 of 2001

O R D E R:

This writ petition has been filed by Smt.C.V.Venkat Rao with a prayer to issue an order or direction or writ more particularly in the nature of *mandamus* declaring the order of the 1st respondent in Case No. ULC/1/492/82 dated 10-07-2001 as illegal and arbitrary.

The facts of the case in brief are as follows:

One Smt. C.V.Venkat Rao filed a declaration declaring the properties owned by her within the Municipal limits of Hyderabad and also the Cantonment area. The Special Officer, who is the competent authority, passed orders declaring her as surplus holder. Against the same, she filed an appeal before the Director of Defence Estates, Ministry of Defence, Southern Command, Pune. Her appeal came to be dismissed by an order dated 24-06-1991. The relevant portion of the order reads as follows:

> "9. The plea that the decision in the case of Iqbal Alladin is relevant to Bungalow No.54 Bolarum cannot be legally upheld because the Competent Authority is at liberty to determine the excess vacant land on the basis of the provisions of the ULC Act.
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> 10. Finally, the point about 50% of the land being excluded from the calculation of vacant land on account of FSI of 0.5 imposed, it is pointed out that this argument cannot be supported in accordance with the law as enunciated by the Government because there is no prohibition against any construction being made on this land if the excess vacant land is taken over by the Govt. for public use under any Master Plan or statutory regulations.
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> 11. In view of the above facts, the appeal fails and is hereby dismissed. The Competent Authority may proceed further with the finalisation and taking over of the excess vacant land as per the provisions of the ULC Act."

The declarant did not choose to question the order passed by the appellate authority. The competent authority issued a notification as required under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), which came to be published on 19-03-1992. Subsequently, a notification under Section 10(5) of the Act came to be issued on 10-07-2001. The petitioner claiming the property under the will executed by Smt. C.V.Venkat Rao has filed this writ petition to declare the order passed by the competent authority under Section 10(5) of the Act as void on the ground that by the date of issue of notification under Section 10(5) of the Act, provisions of Urban Land Ceiling Act so far as the Cantonment area is concerned came to be repealed by ULC Regulation Repeal Act 1999.

Counter Affidavit has been filed by respondents 1 and 2. It is stated in the counter affidavit that notification under Section 10(3) of the Act has been

published on 19-03-1992. The relevant portion of the counter affidavit reads as follows:

> "…The declarant, Smt. C.V.Venkat Rao, was issued with a draft statement under Section 8(2) of the Act allowing her to retain an extent of 2007.10 sq. meters setting out the land to be surrendered at 16276.55 sq.meters. An objection under Section 8(4) was filed by her. At the time of considering the objections, the full built-up area purely used for the commercial purposes was excluded from her holding and she was allowed appurtenant and additional appurtenant lands to a few more out-houses existing within the Bungalow No.54 which were not considered at the time of preparation of draft statement under Section 8(2). As a result of this, the total area was found to be 18654.34 sq. meters out of which she was allowed to retain an extent of 4480.25 sq. meters leaving a balance area measuring 14174.09 sq. meters to be surrendered as excess land. An order under Section 8(4) was accordingly passed and the final statement under Section 9 was served on the declarant on 8-8-1985. Aggrieved by the said order the declarant filed an appeal under Section 33 of the Act before the Appellate authority which was numbered as Appeal No.38/1985. After considering all the aspects the Appellate authority dismissed the appeal vide order dated 24-6-1991 and the Competent Authority was directed to proceed further with the finalisation of taking over the excess vacant land as per provisions of the Act. Accordingly necessary notification under Section 10(1) bearing No. ULC/SBD/GLRS No.I/492/82 dated 16th July, 1991 was published in the Andhra Pradesh Gazettee No.38, dated 10th October, 1991, part II-Miscellaneous Notifications of Interest to the Public, P.1070, notifying the excess vacant land, as detailed below, to be surrendered by the declarant:

S.No. Description of the property exent (in .sq.meters)

1.Bungalow No.54, Bolarum, Secunderabad Cantonment 13262.24

2.H.No.1-8-51 & 1-8-52,

Prenderghast Road, Secunderabad 430.66

3.Vacant land in House Nos. 30, 31 and 32,

Prenderghast Road, Secunderabad. 481.19

Total 14174.09

Necessary declaration under Section 10(3) dated 11th February, 1992 was published in the Andhra Pradesh Gazettee No.12, dated 19th March, 1992, Part II-Miscellaneous Notifications of Interest to the Public (P.341, 342)."

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for respondents 1 and 2.

Learned counsel for the petitioner submitted that since 10(5) proceedings have not been concluded by the date of repealing Act, the order passed by the 3rd respondent is to be declared as null and void.

What she means to say is that way of Repeal Act the provisions of Urban Land Ceiling Act were made inapplicable to the Cantonment areas. In support of her submission, reliance has been placed on the decision of the Supreme Court **Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others ().** She also placed reliance on the official memo dated 18-10-2002 issued by the Ministry of Urban Development & Poverty Alleviation (Department of Urban Development). In the decision (1) supra, it has been held that under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999), in case the possession of the land declared surplus not taken over by the state, appeal against the order declaring surplus land stands abated.

Learned Standing Counsel appearing for respondents 1 and 2 submits that notification under Section 10(3) of the Act came to be issued on 19-03-1992 and thereby title of the declarant divested and vested in the State and thus the petitioner who is claiming the property under a will cannot be permitted to question the proceedings which have reached the finality in the year 1991.

Undisputedly the petitioner is claiming the property under a will said to have been executed by the declarant. The declarant died on 6-11-1998. 10(3) notification came to be issued on 10-3-1992. The declarant did not choose to question the 10(3) notification. The ULC Repeal Act came to be applied to the Cantonment areas by way of notification dated 18-10-2002. The relevant portion of the office memo reads as follows:

“The Ministry of Law & Justice, Department of Legal Affairs has opined as follows:

“The Urban Land (Ceiling and Regulation) Act, 1976 was made applicable in respect of Union Territories and the Cantonment Areas by virtue of powers of the parliament to make law under Article 246(1) for Cantonment Areas and for the Union Territories under Article 246(4) of the Constitution. After the enactment of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the ULCR Act, 1976 remain in operation of certain States till those States passed a resolution under Article 252(2) of the Constitution to adopt the Repeal Act of 1999. The State Legislatures are not constitutionally competent to pass a a resolution for adopting a law for the cantonment areas which are directly under the control of the Central Government. The cantonment Act, 1924 was enacted for administration of cantonment in certain areas and this is a law relatable to Entry 3 of the Union List. Presently, the Central Government is administering this act in the Cantonment Areas. The Union Parliament is having exclusive jurisdiction over cantonment areas in respect of specified subjects such as (i) delimitation (ii) local self government (iii) constitution and powers of cantonment authorities and (iv) regulation of house accommodation etc., Chapters XI to XIII of the Act provides for management of buildings, land, streets, boundaries, markets etc., Pursuant to Section 280 of the Cantonment Act the Central Government had enacted the Cantonment Land Administration Rules, 1937 and the Transfer of Property for Cantonment Rules, 1985. This clearly signifies that the “land” within the cantonment areas are administered and regulated by the Cantonment Act, 1924 and not by any other law made by the State Government. As per the ULCR Act, vide Section 2(d) the ‘competent authority’ for the purposes of the Act is defined to mean any person or authority authorized by the State Governments, by notification in the official gazette, to perform the functions of the competent authority under this Act and for such areas as may be specified in the notification and different persons or authorities may be authorized to perform different functions. The notification No. S.O. 5064 dated 30-09-85 issued in pursuance of Section 2(d) read with Section 2(k) of the Act, the Central Government authorizes specified persons to perform the functions of the competent authority under the provisions of the Act. Section 2(k) of the Act states that the “State” includes a Union Territory and the State Government, in relation to any land or buildings situated in Union Territory or within the local limits of cantonment declared as such under Section 3 of the Cantonment Act, 1924 means the Central Government”.

In view of the above, it has been opined by the Ministry of Law and Justice, Department of Legal Affairs that the Urban Land (Ceiling

Regulation) Act, 1976 stands repealed in Cantonment Areas."

By the date of the issue of the official memo, the proceedings in respect of the declarant under the Act reached finality. The declarant died on 6-11-1998 and she did not question the orders passed by the appellate authority. The petitioner claims to have got the property under a will. Whatever property left by the declarant as on 6-11-1998, the petitioner is not entitled to legate. As on 6-11-1998, 10(3) notification came to be issued and thereby title of the declarant over the property divested and vested in the State. Smt. C.V.Venkat Rao was not the title holder of the surplus lands as on the date of her death. Therefore, the question of the petitioner getting the lands under the will executed by Smt. C.V.Venkat Rao does not arise.

Accordingly, the writ petition is devoid of merits and the same is hereby dismissed. No costs.

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19-12-2005

Mjl/*